

STATE OF MICHIGAN
COURT OF APPEALS

LISA DELK,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 26, 2011

No. 295857

Wayne Circuit Court

LC No. 07-727377-NF

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this suit to recover no-fault benefits, plaintiff Lisa Delk appeals as of right the trial court's entry of judgment in favor of defendant State Farm Mutual Automobile Insurance Company following a jury trial. On appeal, Delk argues that the trial court erred when it refused to grant her a new trial on the ground that the jury's verdict was against the great weight of the evidence. We conclude that the trial court did not abuse its discretion when it denied her motion for a new trial. For that reason, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Delk was involved in two car accidents before the one at issue here: one in 1995 and another in 1996. She suffered injuries to her back and neck in both accidents. Delk collected no-fault benefits related to her back and neck injuries. Additionally, she began to receive social security disability benefits sometime in 1997. Delk was on disability due to a thyroid condition, obesity, high blood pressure, and her back injury. She continued to experience pain in her neck and back up to the accident at issue here, which occurred in February 2004.

On February 24, 2004, Delk was rear-ended when she slowed to yield for an emergency vehicle. Delk's car suffered some damage to the bumper and fender, but was operational. She did not have the damage repaired. Delk stated that she was "thrown forward" and "experienced shooting pains in [her] neck and going down [her] back to [her] arms. Paramedics took Delk to the hospital where she was given anti-inflammatory drugs, instructed to follow up with her doctor, and discharged.

Delk followed-up her treatment with her family physician, Dr. K. Virender Mendiratta. Dr. Mendiratta has treated her since 1997 for several ailments, including high blood pressure, back pains, obesity, and thyroid problems. Dr. Mendiratta noted that Delk “had more severe symptoms of headaches, . . . neck pain, [and] shoulder pain.” He prescribed Motrin, Vicodin, and physical therapy.

After three or four months of unsuccessful treatment, Dr. Mendiratta referred Delk to a neurosurgeon, Dr. Phillip Friedman. Delk complained to Dr. Friedman that her neck pain radiated down her arms. Dr. Friedman did not find any objective neurological impairment and suspected that her symptoms were myofascial in origin. In his report, Dr. Friedman indicated that the February 2004 “accident represents some exacerbation of a preexisting condition.”

Dr. Friedman had Delk undergo an MRI examination, which revealed a very minimal posterior non-compressive disc bulge at C5-C6. Dr. Friedman concluded that the MRI showed “some loss of the normal curvature of [Delk’s] cervical spine which is indicative of some muscle spasm in the neck and again was consistent with [his] diagnosis of a myofascial injury.” Dr. Friedman concluded that she sprained her neck and back in the February 2004 accident. He also found that the bulging disc revealed in the MRI was “non-compressive” and that Delk did not have “any ruptured disc or any significant abnormality.”

Dr. Mendiratta disagreed that the July 2004 MRI did not show any neurological abnormality and concluded that the herniation was attributable to the accident. Nevertheless, he also noted that it was possible that the worsening of Delk’s symptoms was degenerative—that is, due to aging.

Delk’s neck pain did not improve and she eventually consulted with a spinal surgeon, Dr. Brady Vibert, in 2007. Dr. Vibert ordered another MRI. The MRI showed an “extruded disc herniation with cranial migration from the C5-6 disc at the left central location with some flattening of the left hemicord.” Dr. Vibert diagnosed Delk with a cervical herniated disc, resulting in cervical myopathy, radiculopathy, and stenosis and concluded that the herniated disc was “probably . . . related to the [2004] automobile accident.” But he too noted that the symptoms could be related to a degenerative condition.

Dr. Vibert performed a laminectomy on Delk at the C5-C6 level on July 31, 2007. She remained in the hospital until August 4, 2007.

State Farm paid no-fault benefits to Delk following the 2004 accident, but discontinued her benefits in May 2007. Delk and State Farm entered into a settlement for claims arising from the date of the accident until May 2, 2007. Delk then sued State Farm for the expenses she incurred as a result of her cervical herniated disc, including the cost of the surgery.

Delk’s claim for no-fault benefits was tried before a jury in September 2009. The trial court submitted a special verdict form to the jury. The jury answered only the first question:

Question No 1: Did the plaintiff sustain an accidental bodily injury?

Answer: No.

The trial court entered a judgment of no cause for action on October 22, 2009 and Delk moved for a new trial or judgment notwithstanding the verdict on October 26, 2009. Specifically, she argued that the jury's verdict was against the great weight of the evidence. The trial court disagreed and denied the motion.

II. GREAT WEIGHT OF THE EVIDENCE

Delk argues that the trial court abused its discretion when it denied her motion for a new trial. This Court reviews a trial court's decision on a motion for a new trial for an abuse of discretion. *Bean v Directions Unlimited, Inc.*, 462 Mich 24, 34-35; 609 NW2d 567 (2000). A trial court abuses its discretion when it selects an outcome that is not within the range of principled outcomes. *McManamon v Redford Charter Twp.*, 273 Mich App 131, 138; 730 NW2d 757 (2006).

A court may grant a new trial when the verdict is against the great weight of the evidence, MCR 2.611(A)(1)(e), but should do so only when the verdict is "manifestly against the clear weight of the evidence." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999) (quotation marks and citation omitted). The trial court cannot substitute its judgment for that of the factfinder, and the jury's verdict should not be set aside if there is competent evidence to support it. *Id.* When a party challenges a jury's verdict as being against the great weight of the evidence, we must give substantial deference to the judgment of the trier of fact. If there is any competent evidence to support the jury's verdict, we must defer to the jury's assessment of the witnesses' credibility. *Allard v State Farm Ins Co*, 271 Mich App 394, 406-407; 722 NW2d 268 (2006). The jury's verdict must be upheld, even if it is inconsistent, if there is any interpretation of the evidence that could logically explain the jury's findings. *Id.* at 407.

An insurer who issues a policy under Michigan's no-fault act is "liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1). The question whether there was an accidental bodily injury is a question of fact to be resolved by the jury. See *Allard*, 271 Mich App at 406-408; *McKim v Home Ins Co (On Remand)*, 163 Mich App 828, 830; 415 NW2d 315 (1987).

In Question No. 1 on the verdict form, the jury found that Delk had not suffered an accidental bodily injury. At trial, Delk argued that there was no dispute that she was injured in the February 2004 automobile accident. In fact, it was undisputed that State Farm paid her benefits for the period between the accident and May 2, 2007. State Farm even acknowledged that the 2004 automobile accident "may have initially caused a temporary aggravation of [Delk's] preexisting problems." On appeal, Delk argues that the jury's verdict was clearly against the great weight of the evidence because every doctor testified that she suffered a "tangible bodily injury"—a cervical sprain or strain. Although she is correct in asserting that all testifying doctors concluded that she suffered a cervical sprain or strain, a jury's verdict should not be overturned if there is a logical explanation for the verdict when considered in light of the legal principles that were argued and applied in the case. See *Bean*, 462 Mich at 31-32 (examining whether the verdict was against the great weight of the evidence in light of the principle that a jury verdict should be upheld—even if arguably inconsistent—if it can be reconciled in light of how the parties' legal theories were actually argued and applied at trial);

see also *Allard*, 271 Mich App at 407 (noting that a jury’s verdict must be upheld if there is a logical explanation for the jury’s findings).

Given the arguments and nature of the proofs presented at trial, it is logical that the jurors inferred that the first question on the verdict form concerned whether Delk’s herniated disc—as opposed to any other injury mentioned during the proofs—constituted an accidental bodily injury. Delk’s theory was that the accident caused an original disc injury that led to the herniation and the surgery. Her lawyer repeatedly emphasized that the accident injured Delk’s disc. Specifically, Delk’s lawyer argued that the evidence proved “that the accident injured her disc, the disc progressed to the herniation and the herniation required the surgery and subsequent treatment.” And Delk’s lawyer reiterated that the damages claimed were limited to the treatment for the herniated disc.

In contrast, State Farm’s position was that Delk’s continuing medical problems after May 3, 2007, including cervical radiculopathy and cervical fusion, were unrelated to the February 2004 automobile accident. The trial court correctly summarized State Farm’s theory when it stated that State Farm believed that Delk’s cervical problems did not arise from the accident at issue: “It’s defendant’s theory that it simply is degenerative, would have happened no matter whether she had any automobile accident or not. That is the natural progression of what her body was doing.” Accordingly, when viewed in light of the parties’ theories, it is logical that the jury would read the question, “Did the plaintiff sustain an accidental bodily injury?” to refer specifically to the cervical herniated disc for which Delk received surgery. That is, the jury’s conclusion that Delk did not suffer an accidental injury can readily be reconciled to the proofs when it is read—as the jury surely read it—to refer to the only injury for which Delk sought compensation. *Bean*, 462 Mich at 31-32.

Understood in this light, we must conclude that there was competent evidence to support the jury’s verdict. Delk had a history of neck problems before the 2004 accident. And there was conflicting evidence at trial with regard to whether her cervical herniated disc was attributable to trauma caused by the 2004 automobile accident or to a degenerative condition. A medical examiner hired by State Farm did not find any residual problems attributed to the February 2004 accident, and instead believed that Delk’s neck problems were attributable to a degenerative condition that would continue to worsen over time. He also opined that “the cervical spine surgery did not address any injury or condition from the motor vehicle accident of February 2004.” Dr. Friedman opined that “a disc bulge is not a traumatic finding” and that it does not relate to the 2004 automobile accident. Dr. Vibert also noted that Delk’s symptoms could be related to a degenerative condition.

As our Supreme Court once observed, when there is testimony in opposition, one “viewpoint or the other must prevail.” *Rossien v Berry*, 305 Mich 693, 701; 9 NW2d 895 (1943). Here, there was clear evidence to support a finding that the injury at issue arose from the 2004 accident, but there was also evidence to support the opposite finding. And, the trial court properly deferred to the jury’s resolution of this competing evidence. *Allard*, 271 Mich App at 406.

The trial court did not abuse its discretion when it denied Delk's motion for a new trial premised on the great weight of the evidence.

Affirmed.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly